

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

62

SOBE NEWS, INC. d/b/a OCEAN DRIVE
MAGAZINE, a Florida corporation,

Plaintiffs,

vs.

OCEAN DRIVE FASHIONS, INC., et al.,

Defendants.

Case No.: 00-0078-CIV-MOORE
Magistrate Judge O'Sullivan

DEFENDANTS' DISCLOSURE OF EXPERT WITNESS

COME NOW the Defendants and disclose the following expert witness for pre-trial and trial proceedings:

1. Witness.

Michael Rappeport, Ph.D.

2. Qualifications, Publications, and Prior Testimony.

Mr. Rappeport's curriculum vitae is attached.

3. Summary of Anticipated Testimony.

Mr. Rappeport will testify that, based upon survey evidence, there is no likelihood of confusion between the marks at issue in this litigation. He will also testify as to the propriety of the survey's methodology and interpretation of its results. He may also testify about any survey evidence that Plaintiff may introduce at trial.

4. Expert Report.

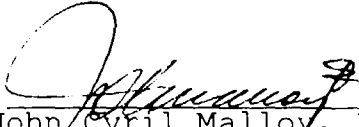
Mr. Rappeport's survey, results, and expert report will be available for production to Plaintiff within fifteen (15) days.

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Respectfully submitted,

Dated: November 6, 2000

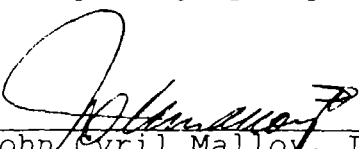
By:


John Cyril Malloy, III
Florida Bar No. 964,220
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John C. Hamilton, Esq., Wicker, Smith, Tutan, O'Hara, etal., P.O. Box 2152, Tampa, Florida 33601k-2152, Attorney for Century Surety Company; Richard S. Ross, Esq., 4801 South University Drive, Suite 3070, Fort Lauderdale, Florida 33328; Neal S. Litman, Grove Plaza, Second Floor, 2900 S.W. 28th Terrace, Coconut Grove, Florida 33133, Attorneys for Plaintiff; Robert Brown, III, Kubick Draper, P.A. 25 West Flagler Street, Penthouse, Miami, Florida 33130, Attorney for Defendant Ocean Drive Fashion, Inc., via first class United States mail, postage pre-paid, this 6th day of November, 2000.

By:


John Cyril Malloy, III
Florida Bar No. 964,220

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DR. MICHAEL RAPPEPORT

Dr. Rappeport has worked in market and survey research areas for more than 30 years, the last 25 as a partner of R L Associates. As part of his function he has made more than 80 appearances as an expert witness in legal cases at trial and/or through deposition. His testimony has dealt with statistics and statistical analysis, marketing, and public opinion in cases in such disparate areas as trademark infringement, libel, damages for failure to fulfill a contract, and reapportionment. He has also testified as an expert in a number of quasi-legal proceedings before a range of public boards, agencies and regulatory bodies.

Education

B.S. Physics, RPI, Troy, New York 1957

M.S. Electrical Engineering, Yale University, New Haven 1958

PH.D. Statistics, New York University, 1968

Professional positions

1975 - present: Founding partner, R L Associates, survey research and consulting firm

Along with sharing responsibility for the management of the firm, Dr. Rappeport has direct responsibility for all statistical aspects of the firm's work. In the main this encompasses sample design and the use of a wide variety of statistical analysis techniques. He has designed national and regional probability samples which are projectable area samples of all civilian non-institutional telephone households. In addition to designing such probability samples, he has been responsible for a very wide range of specialized samples of all types. These include a number of cases in which he has been employed as a consultant by other survey research firms on the design of special samples among hard to reach publics. He has experience with a wide range of statistical techniques useful in data analysis.

1969 - 1972; 1973 - 1975: Vice president and chief statistician, Opinion Research Corporation, Princeton, New Jersey

1972 - 1973: Vice president, Response Analysis Corp. Princeton, New Jersey

1959 - 1969: Supervisor, Bell Telephone Laboratories, Holmdel, New Jersey

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Teaching

At various times, Dr. Rappeport has taught or conducted guest lectures in a number of colleges and universities. He has been an adjunct instructor in both Research Methods and Political Public Opinion at Rutgers University, and taught a course in Marketing at Rider College.

Articles and Speeches

Over the course of the last 20 years, Dr. Rappeport has written approximately 40 published articles, and given more than 70 speeches. He has spoken at a number of meetings of legal organizations. Among the more recent are:

A 1998 speech to the Bar for the Federal Circuit

Witness at a mock trial at the Feb. 1998 Meeting - American Bar Association Antitrust Section

A 1996 speech to the New Jersey Intellectual Property chapter of the Inns of Court.

A 1995 panel presentation for the CLE program, American Bar Assoc. - Antitrust Section.

A 1995 speech to the CLE program, American Bar Assoc. - Intellectual Property Section

Witness at a mock trial at the 1995 meeting of the American Intellectual Property Law Assoc.

Among the wide cross-section of other types of organizations where he has spoken at an annual or other major meeting are Planned Parenthood Federation of America, United States Trademark Association, Travel and Tourism Research Association, Newspaper Research Council, Pennsylvania Hospital Association, and New Jersey Political Science Association.

Other

Dr. Rappeport is currently listed in Who's Who in the East, and several other similar publications dealing with the Legal Profession, Social Sciences and Marketing. He has served on a variety of civic and professional boards. Among those most directly related to his professional activities are:

Editorial Board of the "Trademark Reporter" 1993 - 1996, 1997 - Present

Board of Advisors - Citizens Committee on Bio-Medical Ethics 1986 - Present

New Jersey State Bio-Ethics Task Force on Public and Professional Education - 1989- 1992

Board of Directors, American Association for Public Opinion Research, 1976 - 1980; Standards

Chairman 1979 - 1980

Cases in which Michael Rappeport has appeared either by deposition or in trial as an expert witness 1995-2000. Date shown is for first appearance only. Unless otherwise noted all cases listed were in United States District Courts.

2000

November Deposition - Windsor Industries v Pro-Team - District of Colorado
 November Deposition - AutoZone v Tandy - Middle District Tennessee
 Oct. Deposition - Bristol-Myers Squibb v Rhone-Poulenc Rorer - Southern District New York
 September Deposition - Health and Body Fitness v JB Williams - Central District California
 Sept. Deposition and Oct. Trial- Seattle Storm v AC Media and WNBA - West Dis. Washington
 August Deposition - In Re Bacou US Safety and US Safety Mfg. - International Trade Comm.
 July Deposition - Moldex Metric Inc v Aeero - Central District of California
 July Deposition - Hubbard Construction v Hubbard Services Central District of Florida
 June Trial - Pilates v Current Concepts - Southern District New York
 June Deposition - Thomas & Betts v Panduit - Northern District of Illinois
 May Deposition - Lund v Kohler - District of Massachusetts
 April Deposition - E-cards v King (ecards) - Northern District of California
 April Deposition - Second Circuits v American Circuit breaker - District of Louisiana
 March Deposition - Duckhorn Vineyards v Duckpond Cellars - Northern District of California
 March Deposition and Trial - John Paul Mitchell v Quality King - Southern District NY
 January Deposition - Novartis v Zenith Goldline - Northern District of New Jersey
 January Deposition - Class Action v Johnson & Johnson (Acuvue) - State Court in New Jersey

1999

October Deposition - Knowledge Adventure v Mattel - Central District California
 July Deposition - Karl Storz Endoscopy v Surgi-Tech - Southern District of California
 July Deposition - Nike v Campomar - Southern District of Florida
 July Deposition - E.I. DuPont v duPont Publishing - TTAB Hearing Pending
 May Deposition - Majorica v Barrow and Mallorca Pearls - Southern Dis. of Florida
 April Deposition - Karl Storz Endoscopy v Fiber Tech Medical - District of Maryland
 April Deposition (TTAB) and May Trial (Southern District NY) - Encyclopaedia Britannica v Britannica Home Fashions
 April Trial - Quanterra v Warner Lambert - District of Colorado
 April Deposition - Beverage Marketing v South Beach Beverage Corp. - So. District New York
 March Deposition and Jan 2000 Trial - Audi v Bank Audi - Southern District of Florida
 February Deposition - Mars Supermarkets v Mars the Musicians Planet - District of Maryland
 January Deposition and September Trial - Lepage's v 3M - Eastern District Pennsylvania

1998

Dec. Deposition - Federal Trade Commission v United Industries - District of Maryland
 Dec. Deposition and Feb. 2000 Trial - Rycraft v Ribble - District of Oregon
 Nov. Deposition - Amer. Speech-Lang-Hear v Audiology Fdn - Trial Pending Dis. of Maryland
 Oct. Deposition - Swiss Army Brands v Precise Imports - American Arbitration Association
 Oct. Deposition - Transclean v Bridgewood Services - District of Minnesota
 Oct. Deposition and Jan. 1999 Trial - Havana Club Holding v Bacardi Martini - So. District NY
 Oct. Deposition - Ecoco v Universal Beauty Products - Northern District Illinois
 Sept. Trial - QVC v QVC Club - Eastern District Pennsylvania
 Sept. Deposition & Nov. Trial - Avent America v Playtex Products - Northern District Illinois
 Sept. Deposition - Clorox Co. v Procter & Gamble - Trial Pending District of Puerto Rico
 Aug. Trial - The CIT Group v Citicorp - District of New Jersey

Aug. Deposition - Haverly Systems v Omni Flow Computers - Hearing Pending TTAB
1998 Continued

Aug. Deposition - Sheldon v Northwestern Mutual Life - Trial Pending District of Connecticut
June Deposition - Icon Solutions v Ikon Office Solutions - Eastern District Pennsylvania
June Deposition - Kimmerle v Christie - Trial Pending - Superior Court New Jersey - Morris Co.
May and Oct. 1999 Depositions - Cumberland Packing v Nutrasweet Co. - Southern District NY
May Deposition - QVC v Ecoly - Eastern District Pennsylvania
May Trial - Popular Bank of Florida v Banco Popular de Puerto Rico - Southern District Florida
Mar. Deposition & Trial - Al-Or International v Grandeur Creations - Central District California
Mar. and Oct. 1999 Depositions - The Iams Company v Kal Kan - Southern District Ohio
Jan. Deposition - Pilates v Georgetown Bodyworks - Southern District New York

1997

Dec. Trial - Kobra International v OPI Products - Southern District New York,
Dec. Deposition - Audi A.G. v Banque Audi Suisse - Southern District Florida
Oct. Deposition - U.S. Surgical v Orris - District of Kansas
Oct. Deposition - I.T.T v Bushnell - District of Oklahoma
Sept. Deposition and Trial - Phillips Beverage v Sidney Frank Importing, Southern District NY
Aug. Deposition - Tefal v Regal Ware, Eastern District Virginia
May Deposition - Publications International v Landoll - Northern District Illinois
Mar. Deposition and Trial - Ringling Bros. v State of Utah - Eastern District Virginia
Feb. Deposition - Ringling Bros. v B.E. Windows - Southern District New York
Jan. Deposition - Dove Audio v Simon & Schuster - Southern District New York

1996

Deposition - Gillette v Norelco Consumer Products - District of Massachusetts
Deposition - Harlem Wizards v National Basketball Association - District of New Jersey
Deposition - Samaritan Hlth Services v Integrated Hlth Services - Common Pleas Court, Dayton
OH
Deposition - Bonneville Intl. Inc v Cox Communications - Central District of California
Trial - Argenti v Merrill Lynch - Southern District New York
Deposition and Trial - Bicycle Club v American Playing Cards - State Court in Cincinnati, Ohio

List of publications of Michael Rappeport 1988-2000

When Consumer Beliefs are based on a Court's Intuition - One more Issue Arising From Conopco (with Sandra Kornstein-Cohen); The Trademark Reporter; March-April 1997

Is Judaism Splitting Into Two religions; Sh'ma; April 1996

The Role of the Survey "Expert" - A Response to Judge Posner; The Trademark Reporter, March-April 1995

The Future of the American Jewish Community; Sh'ma; December 1994

The Patient Self Determination Act; Implementation of the Law in Nursing Homes; (co-author); Paper presented at the 122nd Annual Meeting of the American Public Health Association November, 1994

Condition Critical; (co-author); Paper presented at the 1994 Annual Meeting of the American Society of Law, Medicine and Ethics; October 1994

Statistically Based Evidence; National Law Journal, Op-ed Page; August 1993

Prognosis Good for Lower Medical Care Inflation; Wall Street Journal Op-Ed page; February, 1993

Predicting the Election - Why Clinton Will Win; The Sunday Record (Bergen County, New Jersey); August 1992. In addition Dr. Rappeport was a columnist on a weekly basis for the Bergen Record throughout much of 1991. Columns dealt with a wide range of statistical and public opinion issues from crime in New Jersey to the proper reporting of retail sales.